



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

E
467
H3C5
1880

THE

CIVIL RECORD

UC-NRLF



\$B 309 763

OF

Major-General WINFIELD S. HANCOCK,

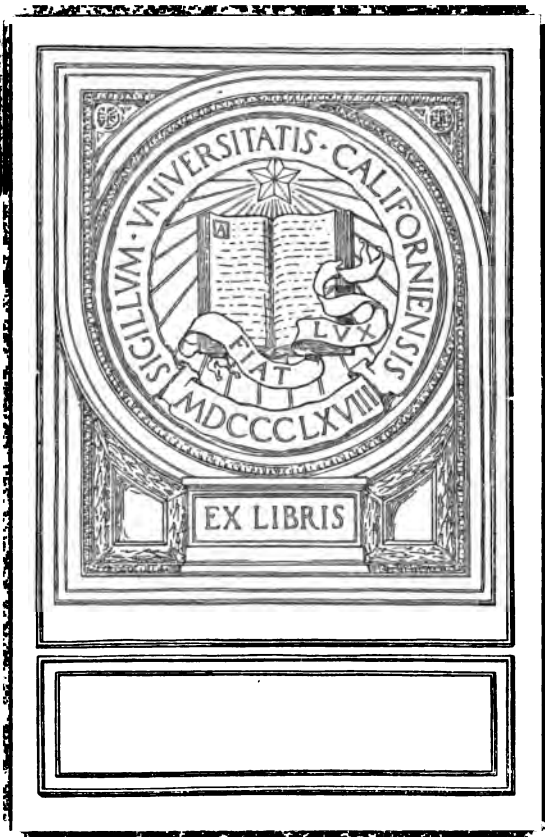
DURING HIS ADMINISTRATION IN

LOUISIANA AND TEXAS.

"The right of trial by Jury, the Habeas Corpus, the Liberty of the Press, the Freedom of Speech, the Natural Rights of Persons, and the Rights of Property, must be preserved."

Extract from the Order of Gen. HANCOCK, of Nov. 29, 1867.

1880.



THE
CIVIL RECORD
OF
Major-General WINFIELD S. HANCOCK,
DURING HIS ADMINISTRATION IN
LOUISIANA AND TEXAS.

ORDER OF
GENERAL HANCOCK

"The right of trial by Jury, the Habeas Corpus, the Liberty of the Press, the Freedom of Speech, the Natural Rights of Persons, and the Rights of Property, must be preserved."

Extract from the Order of Gen. HANCOCK, of Nov. 29, 1867.

E 467
H3C5
1880

TO VIBU
ANBOLUAD

THE CIVIL RECORD

THE CIVIL RECORD
OF
MAJOR-GENERAL WINFIELD S. HANCOCK,
DURING HIS ADMINISTRATION IN LOUISIANA AND TEXAS.

THE object of this pamphlet is to direct the attention of those whom, for political or other reasons, it may concern, to the services of General Hancock in maintaining the civil rights of the citizen during a trying period in the history of our country. It is not intended to enforce this view by many comments, but mainly by a re-publication of some of General Hancock's own orders and official letters, when commander of the Fifth Military District, composed of the States of Louisiana and Texas. The documents selected are but a few out of a voluminous mass of similar material. But they will be sufficient to illustrate the principles upon which his administration of public affairs was conducted.

It is well known that General Hancock has never sought political preferment, that his promotion in the army has been by merit alone, and that for his political principles he has been content to suffer persecution. His prominence before the Democratic National Convention in 1868, and again in 1876, was not brought about by any solicitation of his own; but solely from the public sense of his availability. The frequent mention of his name in connection with the next Presidential nomination, renders it desirable that his qualifications for government should be understood. Apart, however, from politics, and whether he should receive the nomination of his party for civil office or not, still, if when clothed with great authority, he used it with wisdom, firmness and moderation, for the good of the people, and in obedience to the Constitution of his country, in a time of great trial, it is but just that his example should have honorable mention and remembrance among his fellow-citizens.

This publication will, therefore, need no further apology.

When General Hancock was assigned to the command of the Fifth

M97937

Military District, he became, under the Reconstruction Laws of Congress, the absolute ruler of two States—Louisiana and Texas. He had the power to remove civil magistrates, to suppress the local tribunals, to establish military commissions and to suspend the civil laws. He continued in this responsible position, with his headquarters at New Orleans, from November, 1867, until March 16th, 1868, when, in consequence of General Grant's interference with his administration, he was relieved at his own request. What he did during these eventful months, was not as a leader of troops, but almost wholly in the exercise of his duties and authority as the supreme governor of the two States included within his jurisdiction. He has, therefore, not only a civil record, but such a civil record as is best calculated to illustrate his character as a citizen and his qualifications as a statesman. Because, being invested with powers which subjected him to scarcely any other restraint than his own discretion, his administration must be considered in more than an ordinary degree characteristic of the mental and moral qualities of the man.

It will be remembered that at the time General Hancock was appointed to this position, Congress had parcelled out the South into a number of military despotisms, based upon the assumption that the people of that section of the Union had forfeited their constitutional liberties, and had no longer any civil rights which a military commander was bound to respect. But when General Hancock assumed personal command of his military province, his first act was to issue an official order from his headquarters at New Orleans, proclaiming that the Constitution had survived the war, and was still the rightful inheritance of all the people.

This noble document is in the following words:

HEADQUARTERS FIFTH MILITARY DISTRICT,

GENERAL ORDERS, }
No. 40.

NEW ORLEANS, LA, November 29, 1867.

I. In accordance with general orders No 81, Headquarters of the Army, Adjutant General's Office, Washington, D. C., August 27th, 1867, Major-General W. S. Hancock hereby assumes command of the Fifth Military District and of the Department composed of the States of Louisiana and Texas.

II. The General Commanding is gratified to learn that peace and quiet reign in this Department. It will be his purpose to preserve this condition of things. As a means to this great end he regards the maintenance of the civil authorities in the faithful execution of the laws as the most efficient under existing circumstances.

In war it is indispensable to repel force by force, and overthrow and destroy opposition to lawful authority. But when insurrectionary

force has been overthrown and peace established, and the civil authorities are ready and willing to perform their duties, the military power should cease to lead, and the civil administration resume its natural and rightful dominion. Solemnly impressed with these views, the General announces that the great principles of American liberty are still the lawful inheritance of this people, and ever should be. The right of trial by jury, the habeas corpus, the liberty of the press, the freedom of speech, the natural rights of persons, and the rights of property must be preserved.

Free institutions, while they are essential to the prosperity and happiness of the people, always furnish the strongest inducements to peace and order. Crimes and offences committed in this district must be referred to the consideration and judgment of the regular civil tribunals, and those tribunals will be supported in their lawful jurisdiction.

Should there be violations of existing laws which are not inquired into by the civil magistrates, or should failures in the administration of justice by the courts be complained of, the cases will be reported to these headquarters, when such orders will be made as may be deemed necessary.

While the General thus indicates his purpose to respect the liberties of the people, he wishes all to understand that armed insurrection or forcible resistance to the law will be instantly suppressed by arms.

By command of MAJOR-GENERAL W. S. HANCOCK.

[Official]

General Hancock's celebrated letter to Governor Pease of Texas.

The following admirable letter was written and published by General Hancock toward the close of his administration at New Orleans, in reply to the application of Governor Pease, of Texas, for the establishment of military commissions in that State. It deserves a careful reading, and in it may be found a triumphant vindication of the principles upon which General Hancock conducted his administration. No conservative citizen can read it without being impressed with the soundness of the writer's political principles, the firmness and independence of his character, the excellence of his judgment, his statesmanlike ability and manly patriotism :

HEADQUARTERS FIFTH MILITARY DISTRICT,

NEW ORLEANS, LA., March 9, 1868.

To His Excellency E. M. PEASE, *Governor of Texas* :

SIR:—Your communication of the 17th January last, was received in due course of mail, (the 27th January,) but not until it had been widely circulated by the newspaper press. To such a letter—written and published for manifest purposes—it has been my intention to reply as soon as leisure from more important business would permit.

Your statement that the act of Congress “to provide for the more efficient government of the rebel States,” declares that whatever government existed in Texas was provisional; that peace and order should be enforced; that Texas should be part of the Fifth Military District, and subject to military power; that the President should appoint an officer to command in said district, and detail a force to protect the rights of person and property, suppress insurrection and violence, and punish offenders, either by military commission, or through the action of local civil tribunals, as in his judgment might seem best, will not be disputed. One need only read the act to perceive it contains such provisions. But how all this is supposed to have made it my duty to order the military commission requested, you have entirely failed to show. The power to do a thing if shown, and the propriety of doing it, are often very different matters. You observe you are at a loss to understand how a government, without representation in Congress, or a militia force, and subject to military power, can be said to be in the full exercise of all its proper powers. You do not reflect that this government, created or permitted by Congress, has all the powers which the act intends, and may fully exercise them accordingly. If you think it ought to have more powers, should be allowed to send members to Congress, wield a militia force, and possess yet other powers, your complaint is not to be preferred against me, but against Congress, who made it what it is.

As respects the issue between us, any question as to what Congress ought to have done has no pertinence. You admit the act of Congress authorizes me to try an offender by military commission, or allow the local civil tribunals to try, as I shall deem best; and you cannot deny the act expressly recognizes such local civil tribunals as legal authorities for the purpose specified. When you contend there are no legal local tribunals for any purpose in Texas, you must either deny the plain reading of the act of Congress or the power of Congress to pass the act.

You next remark that you dissent from my declaration, “that the country (Texas) is in a state of profound peace,” and proceed to state the grounds of your dissent. They appear to me not a little extraor-

ordinary. I quote your words: "It is true there no longer exists here (Texas) any organized resistance to the authority of the United States." "But a large majority of the white population who participated in the late rebellion, are embittered against the Government, and yield to it an unwilling obedience." Nevertheless, you concede they do yield it obedience. You proceed:

"None of this class have any affection for the Government, and very few any respect for it. They regard the legislation of Congress on the subject of reconstruction as unconstitutional and hostile to their interests, and consider the government now existing here under authority of the United States as an usurpation on their rights. They look on the emancipation of their late slaves and the disfranchisement of a portion of their own class, as an act of insult and oppression."

And this is all you have to present for proof that war and not peace prevails in Texas; and hence it becomes my duty—so you suppose—to set aside the local civil tribunals, and enforce the penal code against citizens by means of military commissions.

My dear sir, I am not a lawyer, nor has it been my business, as it may have been yours, to study the philosophy of statecraft and politics. But I may lay claim, after an experience of more than half a lifetime, to some poor knowledge of men, and some appreciation of what is necessary to social order and happiness. And for the future of our common country, I could devoutly wish that no great number of our people have yet fallen in with the views you appear to entertain. Woe be to us whenever it shall come to pass that the power of the magistrate—civil or military—is permitted to deal with the mere opinions or feelings of the people.

I have been accustomed to believe that sentiments of respect or disrespect, and feelings of affection, love or hatred, so long as not developed into acts in violation of law, were matters wholly beyond the punitive power of human tribunals.

I will maintain that the entire freedom of thought and speech, however acrimoniously indulged, is consistent with the noblest aspirations of man, and the happiest condition of his race.

When a boy, I remember to have read a speech of Lord Chatham, delivered in Parliament. It was during our Revolutionary War, and related to the policy of employing the savages on the side of Britain. You may be more familiar with the speech than I am. If I am not greatly mistaken, his lordship denounced the British Government—his government—in terms of unmeasured bitterness. He characterized its policy as revolting to every sentiment of humanity and religion; proclaimed it covered with disgrace, and vented his eternal abhorrence of it and its measures. It may, I think, be safely asserted

that a majority of the British nation concurred in the views of Lord Chatham. But whoever supposed that profound peace was not existing in that kingdom, or that government had any authority to question the absolute right of the opposition to express their objections to the propriety of the king's measures in any words, or to any extent they pleased? It would be difficult to show that the opponents of the Government in the days of the elder Adams, or Jefferson, or Jackson, exhibited for it either "affection" or "respect." You are conversant with the history of our past parties and political struggles touching legislation on alienage, sedition, the embargo, national banks, our wars with England and Mexico, and cannot be ignorant of the fact, that for one party to assert that a law or system of legislation is unconstitutional, oppressive and usurpative, is not a new thing in the United States. That the people of Texas consider acts of Congress unconstitutional, oppressive, or insulting to them, is of no consequence to the matter in hand. The President of the United States has announced his opinion that these acts of Congress are unconstitutional. The Supreme Court, as you are aware, not long ago decided unanimously that a certain military commission was unconstitutional. Our people everywhere, in every State, without reference to the side they took during the rebellion, differ as to the constitutionality of these acts of Congress. How the matter really is, neither you nor I may dogmatically affirm.

If you deem them constitutional laws, and beneficial to the country, you not only have the right to publish your opinions, but it might be your bounden duty as a citizen to do so. Not less is it the privilege and duty of any and every citizen, wherever residing, to publish his opinion freely and fearlessly on this and every question which he thinks concerns his interest. This is merely in accordance with the principles of our free government; and neither you nor I would wish to live under any other. It is time now, at the end of almost two years from the close of the war, we should begin to recollect what manner of people we are; to tolerate again free, popular discussion, and extend some forbearance and consideration to opposing views. The maxims that in all intellectual contests truth is mighty, and must prevail, and that error is harmless when reason is left free to combat it, are not only sound, but salutary. It is a poor compliment to the merits of such a cause, that its advocates would silence opposition by force; and generally those only who are in the wrong will resort to this ungenerous means. I am confident you will not commit your serious judgment to the proposition that any amount of discussion, or any sort of opinions, however unwise in your judgment; or any assertion or feeling, however resentful or bitter, not resulting in a breach of law, can furnish justification for your denial that profound peace exists in Texas. You

might as well deny that profound peace exists in New York, Pennsylvania, Maryland, California, Ohio and Kentucky, where a majority of the people differ with a minority on these questions; or that profound peace exists in the House of Representatives, or the Senate, at Washington, or in the Supreme Court, where all these questions have been repeatedly discussed, and parties respectfully and patiently heard. You next complain that in parts of the State (Texas) it is difficult to enforce the criminal laws; that sheriffs fail to arrest; that grand jurors will not always indict; that in some cases the military acting in aid of the civil authorities have not been able to execute the process of the courts; that petit jurors have acquitted persons adjudged guilty by you; and that other persons charged with offences have broke jail and fled from prosecution. I know not how these things are; but admitting your representations literally true, if for such reasons I should set aside the local civil tribunals and order a military commission, there is no place in the United States where it might not be done with equal propriety. There is not a State in the Union—North or South—where the like facts are not continually happening. Perfection is not to be predicated of man or his works. No one can reasonably expect certain and absolute justice in human transactions; and if military power is to be set in motion, on the principles for which you would seem to contend, I fear that a civil government, regulated by laws, could have no abiding place beneath the circuit of the sun. It is rather more than hinted in your letter, that there is no local State government in Texas, and no local laws outside of the acts of Congress, which I ought to respect; and that I should undertake to protect the rights of persons and property in *my own way* and in an *arbitrary manner*. If such be your meaning, I am compelled to differ with you. After the abolition of slavery, (an event which I hope no one now regrets,) the laws of Louisiana and Texas existing prior to the rebellion, and not in conflict with the acts of Congress, comprised a vast system of jurisprudence, both civil and criminal. It required not volumes only, but libraries to contain them. They laid down principles and precedents for ascertaining the rights and adjusting the controversies of men, in every conceivable case. They were the creations of great and good and learned men, who had labored, in their day, for their kind, and gone down to the grave long before our recent troubles, leaving their works an inestimable legacy to the human race. These laws, as I am informed, connected the civilization of past and present ages, and testified of the justice, wisdom, humanity and patriotism of more than one nation, through whose records they descended to the present people of these States. I am satisfied, from representations of persons competent to judge, they are as perfect a system of laws as may be found elsewhere, and better suited than any other to the con-

dition of this people, for by them they have long been governed. Why should it be supposed Congress has abolished these laws? Why should any one wish to abolish them? They have committed no treason, nor are hostile to the United States; nor countenance crime, nor favor injustice. On them, as on a foundation of rock, reposes almost the entire superstructure of social order in these two States. Annul this code of local laws, and there would be no longer any rights, either of person or property, here. Abolish the local civil tribunals made to execute them, and you would virtually annul the laws, except in reference to the very few cases cognizable in the federal courts. Let us for a moment suppose the whole local civil code annulled, and that I am left, as commander of the Fifth Military District, the sole fountain of law and justice. This is the position in which you would place me.

I am now to protect all rights and redress all wrongs. How is it possible for me to do it? Innumerable questions arise, of which I am not only ignorant, but to the solution of which a military court is entirely unfitted. One would establish a will, another a deed; or the question is one of succession, or partnership, or descent, or trust; a suit of ejectment or claim to chattels; or the application may relate to robbery, theft, arson, or murder. How am I to take the first step in any such matter? If I turn to the acts of Congress I find nothing on the subject. I dare not open the authors on the local code, for it has ceased to exist.

And you tell me that in this preplexing condition I am to furnish by dint of my own hasty and crude judgment, the legislation demanded by the vast and manifold interests of the people! I repeat, sir, that you, and not Congress, are responsible for the monstrous suggestion that there are no local laws or institutions here to be respected by me, outside the acts of Congress. I say unhesitatingly, if it were possible that Congress should pass an act abolishing the local codes for Louisiana and Texas—which I do not believe—and it should fall to my lot to supply their places with something of my own, I do not see how I could do better than follow the laws in force here prior to the rebellion, excepting whatever therein shall relate to slavery. Power may destroy the forms, but not the principles of justice; these will live in spite even of the sword. History tells us that the Roman pandects were lost for a long period among the rubbish that war and revolution had heaped upon them, but at length were dug out of the ruins—again to be regarded as a precious treasure.

You are pleased to state that “since the publication of (my) general orders No. 40, there has been a perceptible increase of crime and manifestations of hostile feeling toward the Government and its sup-

porters," and add that it is "an unpleasant duty to give such a recital of the condition of the country."

You will permit me to say that I deem it impossible the first of these statements can be true, and that I do very greatly doubt the correctness of the second. General orders No. 40 was issued at New Orleans, November 29, 1867, and your letter was dated January 17, 1868. Allowing time for order No. 40 to reach Texas and become generally known, some additional time must have elapsed before its effect would be manifested, and yet a further time must transpire before you would be able to collect the evidence of what you term "the condition of the country;" and yet, after all this, you would have to make the necessary investigations to ascertain if order No. 40 or something else was the cause. The time, therefore, remaining to enable you, before the 17th of January, 1868, to reach a satisfactory conclusion on so delicate and nice a question must have been very short. How you proceeded, whether you investigated yourself or through third persons, and if so, who they were, what their competency and fairness, on what evidence you rested your conclusion, or whether you ascertained any facts at all, are points upon which your letter so discreetly omits all mention, that I may well be excused for not relying implicitly upon it; nor is my difficulty diminished by the fact that in another part of your letter you state that ever since the close of the war a very large portion of the people have had no affection for the Government, but bitterness of feeling only. Had the duty of publishing and circulating through the country long before it reached me, your statement that the action of the district commander was increasing crime and hostile feeling against the Government, been less painful to your sensibilities, it might possibly have occurred to you to furnish something on the subject in addition to your bare assertion.

But what was order No. 40, and how could it have the effect you attribute to it? It sets forth that "the great principles of American liberty are still the inheritance of this people and ever should be, that the right of trial by jury, the habeas corpus, the liberty of the press, the freedom of speech, and the natural rights of persons and property must be preserved." Will you question the truth of these declarations? Which one of these great principles of liberty are you ready to deny and repudiate? Whoever does so avows himself the enemy of human liberty and the advocate of despotism. Was there any intimation in general orders No. 40 that any crimes or breaches of law would be countenanced? You know that there was not. On the contrary, you know perfectly well that while "the consideration of crime and offences committed in the Fifth Military District was referred to the judgment of the regular civil tribunals," a pledge was

given in order No. 40, which all understood, that tribunals would be supported in their lawful jurisdiction, and that "forcible resistance to law would be instantly suppressed by arms." You will not affirm that this pledge has ever been forfeited. There has not been a moment since I have been in command of the Fifth District, when the whole military force in my hands has not been ready to support the civil authorities of Texas in the execution of the laws. And I am unwilling to believe they would refuse to call for aid if they needed it.

There are some considerations which, it seems to me, should cause you to hesitate before indulging in wholesale censures against the civil authorities of Texas. You are yourself the chief of these authorities, not elected by the people, but created by the military. Not long after you had thus come into office, all the judges of the Supreme Court of Texas—five in number—were removed from office, and new appointments made; twelve of the seventeen district judges were removed, and others appointed. County officers, more or less, in seventy-five out of one hundred and twenty-eight counties, were removed, and others appointed in their places. It is fair to conclude that the executive and judicial civil functionaries in Texas are the persons whom you desired to fill the offices. It is proper to mention, also, that none but registered citizens, and only those who could take the test oath, have been allowed to serve as jurors during your administration. Now, it is against this local government, created by military power prior to my coming here, and so composed of your personal and political friends, that you have preferred the most grievous complaints. It is of them that you have asserted they will not do their duty; they will not maintain justice; will not arrest offenders; will not punish crimes; and that out of one hundred homicides committed in the last twelve months, not over ten arrests have been made; and by means of such gross disregard of duty, you declare that neither property nor life is safe in Texas.

Certainly you could have said nothing more to the discredit of the officials who are now in office. If the facts be as you allege, a mystery is presented for which I can imagine no explanation. Why is it that your political friends, backed up and sustained by the whole military power of the United States in this district, should be unwilling to enforce the laws against that part of the population lately in rebellion, and whom you represent as the offenders? In all the history of these troubles, I have never seen or heard before of such a fact. I repeat, if the fact be so, it is a profound mystery, utterly surpassing my comprehension. I am constrained to declare that I believe you are in very great error as to facts. On careful examination at the proper source, I find that at the date of your letter four cases only of homicides had been reported to these headquarters as having occurred since

November 29, 1867, the date of order 40, and these cases were ordered to be tried or investigated as soon as the reports were received. However, the fact of the one hundred homicides may still be correct, as stated by you. The Freedman's Bureau in Texas reported one hundred and sixty; how many of these were by Indians and Mexicans, and how the remainder were classified, is not known, nor is it known whether these data are accurate.

The report of the commanding officer of the District of Texas shows that since I assumed command no applications have been made to him by you for the arrest of criminals in the State of Texas.

To this date eighteen cases of homicides have been reported to me as having occurred since November 29, 1867, although special instructions had been given to report such cases as they occur. Of these, five were committed by Indians, one by a Mexican, one by an insane man, three by colored men, two of women by their husbands, and of the remainder some by parties unknown—all of which could be scarcely attributable to order No. 40. If the reports received since the issuing of order No. 40 are correct, they exhibit no increase of homicides in my time, if you are correct that one hundred had occurred in the past twelve months.

That there has not been a perfect administration of justice in Texas I am not prepared to deny.

That there has been no such wanton disregard of duty on the part of officials as you allege, I am well satisfied. A very little while ago you regarded the present officials in Texas the only ones who could be safely trusted with power. Now you pronounce them worthless, and would cast them aside.

I have found little else in your letter but indications of temper, lashed into excitement by causes which I deem mostly imaginary, a great confidence in the accuracy of your own opinions, and an intolerance of the opinions of others, a desire to punish the thoughts and feelings of those who differ from you, and an impatience which magnifies the shortcomings of officials who are perhaps as earnest and conscientious in the discharge of their duties as yourself, and a most unsound conclusion that while any persons are to be found wanting in affection or respect for government, or yielding it obedience from motives which you do not approve, war, and not peace, is the status, and all such persons are the proper subjects for military penal jurisdiction.

If I have written anything to disabuse your mind of so grave an error, I shall be gratified.

I am, sir, very respectfully, your obedient servant,

W S. HANCOCK,
Major-General Commanding.

Order of General Hancock revoking a summary removal from office, made by his predecessor, and referring the complaint to the judicial tribunals.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORLEANS, LA., December 4, 1867.

SPECIAL ORDERS }
No. 202.

[EXTRACT.]

2. Paragraph 3, of special orders No. 188, from these headquarters, dated November 16th, 1867, issued by Brevet Major-General Mower, removing P. R. O'Rourke, Clerk of Second District Court, Parish of Orleans, for malfeasance in office, and appointing R. L. Shelly in his stead, is hereby revoked, and P. R. O'Rourke is reinstated in said office.

If any charges are set up against the said O'Rourke, the judicial department of the government is sufficient to take whatever action may be necessary in the premises.

By command of MAJOR-GENERAL HANCOCK.
[Official.]

Order of General Hancock revoking the order of his predecessor which interfered with the selection of jurors; and defining the true and proper use of military power.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORLEANS, LA., December 5, 1867.

SPECIAL ORDERS, }
No. 203.

[EXTRACT.]

2. The true and proper use of military power, besides defending the national honor against foreign nations, is to uphold the laws and civil government, and to secure to every person residing among us, the enjoyment of life, liberty and property. It is accordingly made, by act of Congress, the duty of the commander of this district to protect all persons in those rights, to suppress disorder and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals.

The Commanding General has been officially informed that the administration of justice, and especially of criminal justice, in the courts is clogged, if not entirely frustrated, by the enforcement of paragraph No. 2, of the military order numbered special orders 125, current series, from these headquarters, issued on the 24th of August, A. D.

1867, relative to the qualifications of persons to be placed on the jury lists of the State of Louisiana.

To determine who shall, and who shall not be jurors, appertains to the legislative power; and until the laws in existence regulating this subject shall be amended or changed by that department of the civil government, which the constitutions of all the States under our republican system vest with that power, it is deemed best to carry out the will of the people as expressed in the last legislative act upon this subject.

The qualification of a juror, under the law, is a proper subject for the decision of the courts. The Commanding General, in the discharge of the trust reposed in him, will maintain the just power of the judiciary, and is unwilling to permit the civil authorities and laws to be embarrassed by military interference; and as it is an established fact that the administration of justice in the ordinary tribunals is greatly embarrassed by the operations of paragraph No. 2, special orders No. 125, current series, from these headquarters, it is ordered that said paragraph, which relates to the qualifications of persons to be placed on the jury lists of the State of Louisiana, be, and the same is hereby revoked, and that the trial by jury be, henceforth, regulated and controlled by the Constitution and civil laws, without regard to any military orders heretofore issued from these headquarters

By command of MAJOR-GENERAL HANCOCK.
[Official.]

Order sustaining the jurisdiction of the civil courts over the rights of private property.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORLEANS, LA., December 16, 1867.

SPECIAL ORDERS }
No. 211. }

EXTRACT.

4. Paragraph 3, of special orders No. 197, current series, from these headquarters, issued by Brevet Major-General J. A. Mower, in the matter of the estate of D. B. Staats, is hereby revoked, the local tribunals possessing ample power for the protection of all parties concerned. The property in dispute will be restored to the possession of the party entitled to the same by order of court

By command of MAJOR-GENERAL HANCOCK.
[Official.]

Order to secure the purity of elections, and to prevent military interference at the polls.

HEADQUARTERS FIFTH MILITARY DISTRICT,
NEW ORLEANS, LA., December 18, 1867.

SPECIAL ORDERS }
No. 213. }

EXTRACT.

I. In compliance with the supplementary act of Congress of March 23d, 1867, notice is hereby given that an election will be held in the State of Texas on the 10th, 11th, 12th, 13th and 14th days of February, 1868, to determine whether a convention shall be held, and for delegates thereto, "to form a constitution" for the State under said act.

IX. Military interference with elections, "unless it shall be necessary to keep the peace at the polls," is prohibited by law, and no soldiers will be allowed to appear at any polling place, unless as citizens of the State they are registered as voters, and then only for the purpose of voting; but the commanders of posts will be prepared to act promptly if the civil authorities fail to preserve the peace.

X. The sheriff and other peace officers of each county, are required to be present during the whole time the polls are kept open, and until the election is completed, and will be made responsible that there shall be no interference with judges of election, or other interruption of good order.

As an additional measure to secure the purity of the election, each registrar or clerk is hereby clothed, during the election, with authority to call upon the civil officers of the county to make arrests, and in case of failure of the aforesaid civil officers, are empowered to perform their duties, during the election. They will make full report of such failures on the part of civil officers, to the Commanding General, Fifth Military District, through the headquarters, District of Texas, for orders in each case.

By command of MAJOR-GENERAL HANCOCK.
[Official.]

On the Stay of Civil Process.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,
NEW ORLEANS, LA., December 20, 1867.

The Hon. E. HEATH, *Mayor of New Orleans*:

SIR:—In answer to your communication of the 30th ult., requesting his intervention in staying proceedings in suits against the city on

its notes, the Major-General Commanding directs me to respectfully submit his views to you on that subject, as follows :

Such a proceeding on his part would, in fact, be a stay-law in favor of the city of New Orleans, which, under the Constitution, could not be enacted by the Legislature of the State, and in his judgment such a power ought to be exercised by him, if at all, only in a case of the most urgent necessity.

That the notes referred to were issued originally in violation of the charter of the city, cannot be denied ; but the illegal act has since been ratified by the Legislature. The Corporation is therefore bound to pay them; and even if a defence could be made on technical grounds, it would be disgraceful for the city to avail itself of it. Why, then, should the creditors of the city be prevented from resorting to the means given them to enforce the obligation ?

In support of your application you state that the city is unable to pay its debts. This is, unfortunately, the case with most debtors ; and on that ground nearly all other debtors would be equally entitled to the same relief.

The Supreme Court of this State has decided that taxes due a municipal corporation cannot be seized, under execution, by a creditor of the corporation, nor is any other property used for municipal purposes liable to seizure. If, therefore, a constable levies an execution on such property, he is a trespasser, and the city has its remedy against him in the proper tribunal.

It does not, therefore, seem to the Major-General Commanding that there is an urgent necessity which would justify his interference in the manner required. Besides, the expediency of such a measure is more than questionable ; for, instead of reinstating the confidence of the public in city notes, it would probably destroy it altogether.

I am, sir, very respectfully your obedient servant,

W. G. MITCHELL,

Bvt. Lieut.-Col., U. S. A., Sec'y for Civil Affairs.

On the Trial of Offenders Against the Laws of the State.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,

NEW ORLEANS, LA., December 23, 1867.

His Excellency E. M. PEASE, *Governor of Texas* :

SIR :—Brevet Major-General J. J. Reynolds, commanding District of Texas, in a communication dated Austin, Texas, November 19, 1867, requests that a military commission may be ordered "for the trial of one G. W. Wall, and such other prisoners as may be brought

before it," and forwards, in support of the request, the following papers :

1st. A printed account taken from a newspaper dated Uvalde, October ———, 1867, (contained in a letter of James H. Taylor, and in another from Dr. Ansell, U. S. Surgeon at Fort Inge,) of the murder of R. W. Black, on the ——— day of October, 1867. In this account it is stated Mr. Black was shot through the heart by G. W. Wall "while lying on the counter at Mr. Thomas's store."

2d. A letter of Judge G. H. Noonan to Governor Pease, dated November 10, 1867, informing him that "Wall, Thacker, and Pulliam are in confinement in Uvalde county for murder." In this letter it is asked, "Would it not be best to try them by military commission?"

3d. A letter from Governor Pease, dated "Executive of Texas, Austin, November 11, 1867," in which the Governor states that he received a telegram from Judge G. H. Noonan, an extract from which I transmit herewith. In the letter of the Governor the further statement is made that "Uvalde county, where the prisoners are confined, is on the extreme western frontier of the State, and has only about one hundred voters in a territory of about nine hundred square miles," and he then adds, "It is not probable that they (meaning the prisoners) can be kept in confinement long enough ever to be tried by the civil courts of that county;" and expresses the opinion that they never "can be brought to trial unless it is done before a military commission." And he therefore asks that a military commission be ordered for their trial.

From an examination of the papers submitted to the commander of the Fifth Military District, it does not appear that there is any indisposition or unwillingness on the part of the local civil tribunals to take jurisdiction of, and to try the prisoners in question; and a suggestion made by the Governor that it is not probable the prisoners can be kept in confinement long enough to be tried by the civil courts, (and which is apparently based on the fact that Uvalde County is a frontier county, and does not contain more than a hundred voters,) seems to be the only foundation on which the request for the creation of a military commission is based. This, in the opinion of the commanding general, is not sufficient to justify him in the exercise of the extraordinary power vested in him by law "to organize military commissions or tribunals" for the trial of persons charged with offences against the laws of a State.

It is true that the third section of "An Act to provide for the more efficient government of the Rebel States," makes it the duty of the commanders of military districts "to punish, or cause to be punished, all disturbers of the public peace and criminals;" but the

same section also declares that "to that end he may allow local civil tribunals to take jurisdiction of, and to try offenders." The further power given to him in the same section, "when in his judgment it may be necessary for the trial of offenders," to organize military commissions for that purpose, is an extraordinary power, and from its very nature should be exercised for the trial of offenders against the laws of a State only in the extraordinary event that the local civil tribunals are unwilling or unable to enforce the laws against crime.

At this time the country is in a state of profound peace. The State Government of Texas, organized in subordination to the authority of the Government of the United States, is in the full exercise of all its proper powers. The courts, duly empowered to administer the laws, and to punish all offenders against those laws, are in existence. No unwillingness on the part of these courts is suggested to inquire into the offences with which the prisoners in question are charged, nor are any obstructions whatever in the way of enforcing the laws against them said to exist. Under such circumstances there is no good ground for the exercise of the extraordinary power vested in the commander to organize a military commission for the trial of the persons named.

It must be a matter of profound regret to all who value constitutional government, that there should be occasions in times of civil commotion, when the public good imperatively requires the intervention of the military power for the repression of disorders in the body politic, and for the punishment of offences against the existing laws of a country framed for the preservation of social order; but that the intervention of this power should be called for, or even suggested, by civil magistrates, when the laws are no longer silent and civil magistrates are possessed, in their respective spheres, of all the powers necessary to give effect to the laws, excites the surprise of the commander of the Fifth Military District.

In his view it is of evil example, and full of danger to the cause of freedom and good government, that the exercise of the military power, through military tribunals created for the trial of offences against the civil law, should ever be permitted, when the ordinary powers of the existing State Governments are ample for the punishment of offenders, of those charged with the administration of the laws are faithful in the discharge of their duties.

If the means at the disposal of the State authorities are insufficient to secure the confinement of the persons named in the communication of the Governor of the State of Texas to the general commanding there, until they can be legally tried, on the fact being made known to him, the commander of the district will supply the means to retain

them in confinement, and the commanding officer of the troops in Texas is so authorized to act. If there are reasons in existence which justify an apprehension that the prisoners cannot be fairly tried in that county, let the proper civil officers have the "venue" changed for the trial, as provided for by the laws of Texas.

In the opinion of the commander of the Fifth Military District, the existing government of the State of Texas possesses all the powers necessary for the proper and prompt trial of the prisoners in question in due course of law.

If these powers are not exercised for that purpose, the failure to exercise them can be attributed only to the indolence or culpable inefficiency of the officers now charged with the execution and enforcement of the laws under the authority of the State Government; and if there is such a failure, in the instance mentioned, on the part of those officers to execute the laws, it will then become the duty of the commander to remove the officers who fail to discharge the duties imposed on them, and to replace them with others who will discharge them.

Should these means fail, and it be found, on further experience, that there are not a sufficient number of persons among the people now exercising political power in Texas, to supply the public with officers who will enforce the laws of the State, it will then become necessary for the commander of the Fifth Military District to exercise the powers vested in him, by the acts of Congress under which he is appointed, for the purpose of vindicating the majesty of the law. But until such necessity is shown to exist, it is not the intention of the commanding general to have recourse to those powers; and he deems the present a fitting occasion to make this known to the Governor of Texas, and through him to the people of the State at large.

I am, sir, very respectfully, your obedient servant,

W. G. MITCHELL,

Bvt. Lieut.-Col., U. S. A., Sec'y for Civil Affairs.

On elections by the people.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,

NEW ORLEANS, LA., December 28, 1867.

Lieutenant-Colonel W. H. Wood, *Commanding District of Louisiana,*
New Orleans, La.:

COLONEL:—I am directed by the Major-General Commanding to acknowledge receipt of a letter from Nelson Durand, (forwarded by

you,) stating that the Treasurer of Avoyelles Parish, La., caused an election to be held to ascertain if the citizens of the township were in favor of selling a school section belonging to the parish, and requesting an opinion as to the legality of said election.

In reply to said letter, I am directed by him to state that if the provision of the law were complied with in regard to advertisements, the manner of taking the sense of the inhabitants, and legal voters only were admitted to take part, there seems to be no reason why the action should be considered a nullity. It was not, properly speaking, an election, but a way prescribed by law of arriving at the will of the community as regards the disposition to be made of certain school lands belonging to the parish.

The previous authorization of the Major-General Commanding is not considered necessary. But if the sense of the people was not duly regarded, (on the previous occasion,) as to the foregoing requirements, the matter should be again referred to them for a free and legal expression of their opinion.

I am, Colonel, very respectfully, your obedient servant,

W. G. MITCHELL,

Bvt. Lieut-Col., U. S. A., Sec'y for Civil Affairs.

On removals from office without judicial investigation and determination.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,

NEW ORLEANS, LA., December 30, 1867.

His Excellency B. F. FLANDERS, *Governor of Louisiana*:

GOVERNOR:—I am directed by the Major-General Commanding to acknowledge the receipt of your communication of the 11th inst., with papers and documents accompanying the same, charging the Police Jury, Parish of Orleans, right bank, with appropriating to their own use and benefit the public funds of said parish, and with being personally interested in contracts let by them, and recommending the removal from office of the president and members of said Police Jury; and, in reply, to state that these charges present a proper case for judicial investigation and determination; and as it is evident to him that the courts of justice can afford adequate relief for the wrongs complained of, if proved to exist, the Major-General Commanding has concluded that it is not advisable to resort to the measures suggested in your excellency's communication.

I am, Governor, very respectfully, your obedient servant,

W. G. MITCHELL.

Bvt. Lieut-Col., U. S. A., Sec'y for Civil Affairs.

Order of General Hancock disclaiming judicial functions in civil cases.

HEADQUARTERS FIFTH MILITARY DISTRICT,

GENERAL ORDERS }
No. 1.

NEW ORLEANS, LA., January 1, 1868.

Applications have been made at these headquarters implying the existence of an arbitrary authority in the Commanding General touching purely civil controversies.

One petitioner solicits this action, another that, and each refers to some special consideration of grace or favor which he supposes to exist, and which should influence this Department.

The number of such applications and the waste of time they involve, make it necessary to declare that the administration of civil justice appertains to the regular courts. The rights of litigants do not depend on the views of the general—they are to be adjudged and settled according to the laws. Arbitrary power, such as he has been urged to assume, has no existence here. It is not found in the laws of Louisiana or of Texas—it cannot be derived from any act or acts of Congress—it is restrained by a constitution and prohibited from action in many particulars.

The Major-General Commanding takes occasion to repeat, that while disclaiming judicial functions in civil cases, he can suffer no forcible resistance to the execution of process of the courts.

By command of MAJOR-GENERAL HANCOCK.

[Official.]

Communication concerning an application by a railroad company.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,

NEW ORLEANS, LA., January 2, 1868.

HENRY VAN VLEET, Esq., *Chief Engineer*:

SIR:—In reply to your communication, requesting the Major-General Commanding to issue a certain order relative to the New Orleans, Mobile and Chattanooga Railroad Company, I am directed by him to state:

That the order asked for embraces questions of the most important and delicate nature, such as the exercise of the right of eminent domain, obstruction of navigable rivers or outlets, etc., and it appears to him very questionable whether he ought to deal with questions of that kind; nor is it clear that any benefit could result to the company from such an order.

So far as the State of Louisiana is concerned, there can be no diffi-

culty in obtaining a decree of appropriation of the land which may be required for the enterprise, according to the existing laws, as the company has been regularly incorporated under the general corporation act. Be this, however, as it may, the question of *power*, which the company desires solved by the proposed order, belongs properly to the judiciary, and therefore the Major-General Commanding declines to take action in this matter.

If you desire, the papers in this case, together with a copy of this letter, will be forwarded to the Secretary of War.

I am, sir, very respectfully, your obedient servant,

W. G. MITCHELL,

Bvt. Lieut.-Col. U. S. A., Sec'y for Civil Affairs.

Order of General Hancock revoking certain instructions issued by his predecessor to the Board of Registration.

HEADQUARTERS FIFTH MILITARY DISTRICT,

GENERAL ORDERS }
No. 8.

NEW ORLEANS, LA., January 11, 1868.

Printed "Memoranda of disqualifications for the guidance of the Boards of Registrars, under the Military Bill passed March 2, 1867, and the Bill supplementary thereto," and "Questions to be answered by persons proposing to register," were distributed from these headquarters in the month of May, 1867, to the members of the Boards of Registration, then in existence in the States of Louisiana and Texas, for the registration of "the male citizens of the United States" who are qualified to vote for delegates under the acts entitled "An act to provide for the more efficient government of the Rebel States."

These "Memoranda" and "Questions" are as follows:

[The Memoranda, being lengthy, are omitted.]

Grave differences of opinion exist among the best informed and most conscientious citizens of the United States, and the highest functionaries of the National Government, as to the proper construction to be given to the acts of Congress prescribing the qualifications entitling persons to be registered as voters, and to exercise the right of suffrage at the elections to be holden under the act entitled "An act to provide for the more efficient government of the Rebel States" and the acts supplementary thereto. Such differences of opinion are necessary incidents to the imperfection of human language when employed in the work of legislation.

Upon examining those acts, the Commanding General finds himself constrained to dissent from the construction given to them in the "Memoranda" referred to. This construction would of course neces-

sarily exclude all officers holding offices created under *special* acts of the State Legislatures, including all officers of municipal corporations, and of institutions organized for the dispensation of charity, under the authority of such special laws. Such a construction, in the opinion of the Major-General Commanding, has no support in the language of the acts of Congress passed on the 2d and the 23d of March, 1867, which were the only acts in existence when these "Memoranda" were distributed. Since that time, however, what was before, in the opinion of the Commanding General, only an error of construction, would now be a contravention of the law, as amended and defined in the act of July 19, 1867.

The Major-General Commanding also dissents from various other points in the construction given to the disqualifying clauses of the acts in question, as shown by the "Memoranda" referred to, but he will add nothing further to what he has already said on the subject, because his individual opinions cannot rightfully have, and ought not to have, any influence upon the Boards of Registration in the discharge of the duties expressly imposed upon and intrusted to them by these acts of Congress as they now stand. The Boards of Registration are bodies created by law with certain limited but well-defined judicial powers. It is made their especial duty "to ascertain, upon such facts as they can obtain, whether any person applying is entitled to be registered" under the acts. Their decisions upon the cases of individual applicants are final as to the right, unless appeals are taken, in the proper form, and carried before competent superior authority for revision; and, like the members of ordinary courts engaged in the exercise of judicial functions, it is the bounden duty of the members of the Boards of Registration to decide upon the questions as to the right of any applicant, on the facts before them, and in obedience to the provisions of the law.

Since the passage of the act of July 19, 1867, it is not only the right, but the solemn duty of the members of these Boards, each for himself, and under the sanction of his oath of office, to interpret the provisions of the acts from which the authority of the Boards was derived, and to decide upon each case according to the best of his own judgment.

The distribution of the above "Memoranda" was well calculated to produce the impression in the minds of the members of Boards of Registration, that they constituted rules prescribed to them for their government in the discharge of their official duties which they were required to obey; and it seems certain from various communications of facts in relation to the mode of carrying out the registration, that they were so regarded by the members of the Boards, and that they not only influenced, but in point of fact, controlled the proceedings of the different Boards.

In consequence of this, and as the time for the revision of the registration in the State of Texas is now at hand, and the duty of making the revision will, it is probable, in a great degree be performed by persons who are members of the Boards of Registration, to which the "Memoranda" in question were distributed for their guidance, the Major-General Commanding deems it of importance that the members of the Boards of Registration, and the people at large, should be informed that the "Memoranda" before referred to, distributed from the headquarters of this Military District, are null and of no effect, and are not now to be regarded by the Boards of Registration in making their decisions; and that the members of the Boards are to look to the laws, and to the laws alone, for the rules which are to govern them in the discharge of the delicate and important duties imposed upon them.

For this purpose they will be furnished with copies of the acts of Congress relating to this subject, and of the amendment (known as Article XIV.) to the Constitution of the United States.

In case of questions arising as to the right of any individual to be registered, the person deeming himself aggrieved is entitled to his appeal from the decision of the Board, and the Boards are directed to make a full statement of the facts in such cases, and to forward the same to these headquarters without unnecessary delay.

By command of MAJOR-GENERAL HANCOCK.

[Official.]

Order for convening a special civil court for the trial of criminal cases.

HEADQUARTERS FIFTH MILITARY DISTRICT,

NEW ORLEANS, La., January 2, 1868.

SPECIAL ORDERS }
No. 1. }

[EXTRACT.]

3. *Whereas*, The presence of an epidemic at Corpus Christi has prevented the holding of the usual term of the District Court of Nueces County, Texas; and

Whereas, A large number of criminal cases are on the docket of said court that should be tried without delay:

It is therefore ordered, That a special term of the District Court for Nueces County shall be held on Monday, the thirteenth day of January, 1868, for the trial of all criminal cases that may be brought before it.

Such court shall continue in session for three weeks, unless the business before it is sooner disposed of.

All process in criminal cases shall be, and they are hereby made, returnable to the said special term of said court.

The proper officers of that county will cause the usual number of jury-men to be drawn and summoned.

By command of MAJOR-GENERAL HANCOCK.

[Official.]

Concerning the levy of a special tax.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,

NEW ORLEANS, LA, January 12, 1868.

His Excellency E. M. PEASE, *Governor of Texas, Austin, Texas:*

GOVERNOR:—I am directed by the Major-General Commanding to acknowledge the receipt of your letter and accompanying documents, relative to an application from the Mayor and City Council of Houston, for authority to hold an election to determine whether a special tax shall be levied for the purpose of raising means with which to cut a ship's channel to Galveston Bay, and to state that if the power to hold such election was not conferred upon the city of Houston by its act of incorporation, nor by any act of the Legislature, no such election, and no tax levied for such a purpose would be legal.

I am, Governor, very respectfully, your obedient servant,

W. G. MITCHELL.

Bvt. Lieut.-Col. U. S. A., Sec'y for Civil Affairs.

Relating to the collection of taxes.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,

NEW ORLEANS, LA, January 15, 1868.

H. PERALTA, Esq., *Auditor of Public Accounts, New Orleans, La.:*

SIR:—I am directed by the Major-General Commanding to acknowledge receipt of your letter of the 13th inst, in which you state that the "taxes imposed by the Constitutional Convention cannot be collected through the ordinary process of collecting taxes in this State," and "refer the whole matter to him for his action;" and in reply to state that the tax-collectors of the parishes of Orleans and Jef-

person, in their report to you of the same date, say that "the tax-payers have generally refused to pay the tax." By reference to the ordinance of the convention, you will find "that the Auditor of Public Accounts of the State shall, as under existing laws in relation to the collection of taxes, superintend and control the collection of said tax of one mill per cent., and shall give immediate notice and instructions to the different sheriffs and tax-collectors."

It does not appear, from your statement, that any process for the collection of this tax has issued, or that any other steps have been taken, except giving notice in the newspapers, and a demand to pay which has been refused. No resort has been made to those coercive means to enforce the payment of taxes pointed out by the laws of the State; this it is your duty to direct the tax-collector to do. When that is done, and forcible resistance should be made, the Major-General Commanding will, upon it being reported to him, take prompt measures to vindicate the supremacy of the law.

I am, sir, very respectfully, your obedient servant,

W. G. MITCHELL,

Bvt. Lieut.-Col. U. S. A., Sec'y for Civil Affairs.

Relating to the collection of taxes.

HEADQUARTERS FIFTH MILITARY DISTRICT,

OFFICE OF SECRETARY FOR CIVIL AFFAIRS,
NEW ORLEANS, LA., January 21, 1868.

Hon. WM. P. McMILLAN and Hon M. VIDAL, *Special Committee* :

GENTLEMEN:—The Major-General Commanding directs me to acknowledge the receipt of your letter of the 17th instant, and to state in reply that the second ordinance of the Constitutional Convention, adopted on the 4th of January, 1868, provides a new mode for the collection of the tax, and imposes penalties on defaulting taxpayers.

You request the Commanding General to state what his action would be should the civil courts of Louisiana interfere with the collectors in the discharge of their duties.

In this connection the Commanding General deems it unnecessary to repeat what he has already stated in reply to a previous letter concerning his authority on this subject.

It would be highly improper for him to anticipate any illegal interference of the courts in the matter.

Whenever a case arises for the interposition of the powers vested in the Commanding General by the acts of Congress, he will promptly exercise them for the maintenance of law and order.

I am, sir, very respectfully, your obedient servant,

W. G. MITCHELL,

Bvt. Lieut.-Col. U. S. A., Sec'y for Civil Affairs.

Letter of General Hancock to General Howard, on the usurpation of the Freedmen's Bureau.

HEADQUARTERS FIFTH MILITARY DISTRICT,

NEW ORLEANS, LA., February 24, 1868.

Major-General O. O. HOWARD, *Commissioner of Bureau Refugees, Freedmen, and Abandoned Lands, Washington, D. C.:*

GENERAL:—Referring to the report of Captain E. Collins, Seventeenth Infantry, sub-assistant commissioner of the Bureau refugees, freedmen, and abandoned lands, at Brenham, Texas, dated December 31, 1867, and transmitted by you for my information, I have the honor to state that I do not understand how any orders of mine can be interpreted as interfering with the proper execution of the law creating the Bureau. It is certainly not my intention that they should so interfere. Anything complained of in that letter, which could have lawfully been remedied by the exercise of military authority, should have received the action of General Reynolds, who, being military commander, and also Assistant Commissioner for Texas, was the proper authority to apply the remedy, and to that end was vested with the necessary power.

A copy of the report of Captain Collins had already been forwarded to me by General Reynolds before the receipt of your communication, and had been returned to him January 16th, with the following indorsement: "Respectfully returned to Brevet Major-General J. J. Reynolds, commanding District of Texas.

"This paper seems to contain only vague and indefinite complaints, without specific action as to any particular cases. If Captain Collins has any special cases of the nature referred to in his communication, which require action at these headquarters, he can transmit them, and they will receive attention."

No reply has been received to this—a proof either of the non-existence of such special cases, or of neglect of duty on the part of Captain Collins in not reporting them. It is, and will be my pleasure as well as duty, to aid you and the officers and agents under your direction, in the proper execution of the law. I have just returned from a trip to Texas. Whilst there I passed through Brenham twice, and saw Captain Collins, but neither from him nor from General Reynolds, did I hear anything in regard to this subject, so far as I recollect.

There are numerous abuses of authority on the part of certain agents of the Bureau in Texas, and General Reynolds is already investigating some of them.

My intention is to confine the agents of the Bureau within their legitimate authority, so far as my power as district commander extends; further than that, it is not my intention or desire to interfere

with the Freedmen's Bureau. I can say, however, that had the district commander a superior control over the freedmen's affairs in the district, the Bureau would be as useful, and would work more harmoniously, and be more in favor with the people. At present there is a clashing of authority. I simply mention the facts without desiring any such control.

The Reconstruction Acts charge district commanders with the duty of protecting all persons in their rights of person and property; and to this end authorize them to allow local civil tribunals to take jurisdiction of, and try offenders; or if in their opinion necessary, to organize a military commission or tribunals for that purpose.

They are thus given control over all criminal proceedings for violation of the statute laws of the States, and for such other offences as are not by law made triable by the United States courts. The Reconstruction Acts exempt no class of persons from their operation, and the duty of protecting *all* persons in their rights of person and property, of necessity invests district commanders with control over the agents of the bureau, to the extent of at least enabling them to restrain these agents from any interference with, or disregard of their prerogatives as district commanders.

The district commanders are made responsible for the preservation of peace and the enforcement of the local laws within their districts; and they are the ones required to designate the tribunals before which those who break the peace and violate these laws shall be tried.

Such being the fact, many of the agents of the Bureau seem not to be aware of it. In Texas some are yet holding courts, trying cases, imposing fines, taking fees for services, and arresting citizens for offences over which the Bureau is not intended by law to have jurisdiction.

General Reynolds is aware of some of these cases, and is, as I have already mentioned, giving his attention to them.

In Louisiana, this state of affairs exists to a less extent, if at all.

I am, General, very respectfully, your obedient servant,

W. S. HANCOCK,

Major-General U. S. Army, Commanding.

About the date of the preceding letter, however, the time had arrived when it was thought necessary by the controlling powers at Washington to supersede General Hancock's administration in Louisiana and Texas, it being deemed an obstacle in the way of the Congressional plan of reconstruction, which contemplated the complete suppression of the civil authorities of those States, and the substi-

tution of military commissions. General Garfield, the chairman of the Military Committee in the House of Representatives, introduced a bill to reduce the number of major-generals in the army with the avowed object of getting rid of Hancock, and thus punish him for his steadfast subordination of the military to the civil jurisdiction. This bill, however, was never pressed to its passage, being deemed by those friendly to its object as too likely to excite a popular demonstration in favor of the persecuted individual.

A safer method was adopted. General Grant, having been invested by Congress with extraordinary powers, so as to be no longer responsible to the President, his constitutional commander-in-chief, was induced to interfere in such manner with General Hancock's official action as to humiliate him before the people he was sent to govern. This naturally soon led to General Hancock's application to be relieved of his command.

About this time he wrote to a friend in Congress, as follows :

... "I hope to be relieved here soon. The President is no longer able to protect me. So that I may expect one humiliation after another, until I am forced to resign. I am prepared for any event. Nothing can intimidate me from doing what I believe to be honest and right."

His letter to Governor Pease, in which General Hancock vindicated the justice and policy of his administration bears date the 9th of March, 1868, and on the 16th of the same month (seven days afterwards) he was relieved of his command.

14 DAY USE
RETURN TO DESK FROM WHICH BORROWED

LOAN DEPT.

This book is due on the last date stamped below, or
on the date to which renewed.

Renewed books are subject to immediate recall.

LIBRARY USE

DEC 11 1961

REC'D LD

DEC 11 1961

U.C.L.A.

**INTER LIBRARY
LOAN**

ONE MONTH AFTER RECEIPT

NON-RENEWABLE

MAY 29 1964

LD 21A-50m-8,'61
(C1795s10)476B

General Library
University of California
Berkeley

M97937

E 467
H 335
1 5 7

THE UNIVERSITY OF CALIFORNIA LIBRARY

